

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONALD FRANK SMITH,	::	CIVIL ACTION NO.
Movant,	::	1:10-CV-410-MHS-LTW
	::	
v.	::	CRIMINAL ACTION NO.
	::	1:06-CR-376-MHS-LTW
	::	
UNITED STATES OF AMERICA,	::	MOTION TO VACATE
Respondent.	::	28 U.S.C. § 2255

ORDER

Movant, pro se, seeks to vacate his sentence under 28 U.S.C. § 2255. (Doc. 139.) Magistrate Judge Walker issued a Report and Recommendation (“R&R”) that recommends denying the § 2255 motion and denying a certificate of appealability. (Doc. 150.) Movant filed objections to the R&R. (Docs. 153, 154.)

Under 28 U.S.C.A. § 636(b)(1), a district judge “shall make a de novo determination of those portions of the [R&R] or specified proposed findings or recommendations to which objection is made.” 28 U.S.C.A. § 636(b)(1). The Court must conduct a de novo review if a party files “a proper, specific objection” to a finding contained in the report and recommendation. *Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006); *United States v. Gaddy*, 894 F.2d 1307, 1315 (11th Cir. 1990); *LoConte v. Dugger*, 847 F.2d 745, 750 (11th Cir. 1988). Legal

conclusions are reviewed de novo review regardless of whether a party specifically objects. *United States v. Keel*, 164 F. App'x 958, 961 (11th Cir. 2006); *United States v. Warren*, 687 F.2d 347, 348 (11th Cir. 1982).

The Court has conducted a careful, de novo review of the portions of the R&R to which Movant objected and finds no merit in Movant's objections. Movant continues to claim that District Judge Martin, who presided over his criminal case, and Magistrate Judge Walker were biased against him and that Judge Walker remains biased and is "a party member of the on-going conspiracy to unlawfully convict" him. (Doc. 153 at 2.) There is no basis in the record or anything else to support Movant's allegations in this regard, and the Court finds those allegations frivolous.

The Court agrees with the findings in the R&R that Movant has not shown that his trial and appellate counsel, Kendal Silas, was deficient in representing him or that any of the alleged deficiencies prejudiced Movant. Movant's other claims, which he raised months after he filed his § 2255 motion, also lack merit, as the R&R correctly found.

Accordingly, the Court **OVERRULES** Movant's objections [153 & 154] and **ADOPTS** the R&R [150] as the opinion of the Court. Movant's § 2255 motion [139] is **DENIED** and Movant is **DENIED** a certificate of appealability. Civil action

number 1:10-CV-410-MHS-LTW is **DISMISSED**.

SO ORDERED this 2 day of Aug, 2011.



MARVIN H. SHOOB
UNITED STATES DISTRICT JUDGE